



OVERSEAS DECISIONS BULLETIN

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Decisions of the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa, the Supreme Court of New Zealand and the Hong Kong Court of Final Appeal. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

Cloud Ocean Water Ltd v Aotearoa Water Action Inc & Ors
Supreme Court of New Zealand: [\[2023\] NZSC 153](#)

Reasons delivered: 20 November 2023

Coram: Winkelmann CJ, Glazebrook, O'Regan, Williams and French JJ

Catchwords:

Administrative law – Consent to use water – Land and Water Regional Plan – Where appellant and third respondent acquired resource consents from other businesses for take and use of water – Where appellant applied to second respondent to allow water taken under resource consent it had acquired to be used for purpose of its proposed water bottling business – Where second respondent granted application to amalgamate original consent with new consent – Where similar situation arose in relation to third respondent – Where first respondent incorporated to challenge granting of consents to appellant and third respondent – Where first respondent commenced judicial review proceeding in High Court and was unsuccessful – Where first respondent successfully appealed to Court of Appeal – Validity of consent – Whether effects on environment of end use of plastic bottles should have been considered – Whether adverse effects on cultural values and tikanga arising from proposed water bottling activity relevant matters second respondent should have considered.

Held (5:0): Appeal dismissed with costs.

Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)

Supreme Court of Canada: [\[2023\] SCC 31](#)

Reasons delivered: 8 December 2023

Coram: Wagner CJ, Karakatsanis, Côté, Martin, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Administrative law – Judicial review – Discretionary administrative decisions engaging Charter protections – Charter values – Where territorial ministerial directive allowed categories of parents not holding right to have their children receive instruction in one of two official languages, where it is minority language, to apply to enrol their children in French first language education program – Where Minister responsible denied applications for enrolment on ground that non-rights holder parents concerned did not meet conditions for various categories established by directive – Whether Minister had to consider purpose of minority language educational rights guaranteed by Charter in exercising her discretion – Whether decisions made by Minister reasonable.

Constitutional law – Charter of Rights – Minority language educational rights – Where non-rights holder parents applied to enrol their children in French first language education program in Northwest Territories – Where Minister responsible denied applications for enrolment – Whether Minister’s decisions engage Charter protections – *Canadian Charter of Rights and Freedoms*, s 23.

Held (7:0): Appeal allowed with costs.

Anti-Discrimination Legislation

Acheson Hotels, LLC v Laufer

Supreme Court of the United States: [Docket No. 22-429](#)

Reasons delivered: 5 December 2023

Coram: Roberts CJ, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett and Jackson JJ

Catchwords:

Anti-discrimination legislation – Discrimination on basis of disability – Standing to sue – *Americans with Disabilities Act of 1990* (“ADA”) – Where respondent sued hundreds of hotels whose websites failed to state whether rooms accessible to disabled – Where respondent sued hotels where she

did not have any intention to stay – Where respondent systematically searched web to find hotels that failed to provide accessibility information and sued to force compliance with ADA – Where hotels argued respondent not injured by absence of information about rooms she had no plans to reserve – Where hotels argued only plaintiffs who allege concrete injury have standing – Where respondent singlehandedly generated circuit split – Where Supreme Court took case from First Circuit to resolve split – Where respondent later dismissed pending suits and filed suggestion of mootness in Supreme Court – Where Supreme Court heard appeal because while respondent’s case is moot, circuit split on issue briefed and argued in Supreme Court is alive – Whether respondent has Article III standing to sue.

Held (9:0): Judgment of Court of Appeals for the First Circuit vacated; case remanded.

Arbitration

The Republic of India v Deutsche Telekom AG

Singapore Court of Appeal: [\[2023\] SGCA\(I\) 10](#)

Reasons delivered: 15 December 2023

Coram: Menon CJ, Prakash, Chong JJCA, Mance and French IJJ

Catchwords:

Arbitration – Enforcement of foreign arbitral award – Transnational issue estoppel – Where India and Germany entered into “Agreement between the Federal Republic of Germany and the Republic of India for the Promotion and Protection of Investments” (“India-Germany BIT”) – Where Indian company and Indian state-owned entity entered into agreement for leasing of India’s space segment capacity to Indian company (“leasing agreement”) – Where respondent invested in Indian company – Where respondent commenced arbitration against India contending India’s annulment of leasing agreement breached various provisions of India-Germany BIT – Where tribunal issued Interim Award on jurisdiction and liability, finding India liable for breaching obligation to accord fair and equitable treatment under India-Germany BIT to respondent’s investment – Where India unsuccessfully applied to Federal Supreme Court of Switzerland to set aside Interim Award for lack of jurisdiction – Where tribunal rendered Final Award on quantum – Where India unsuccessfully applied to Swiss Federal Supreme Court to revise and annul Interim Award and Final Award and to remit matter to another tribunal – Whether India can raise same grounds for resisting enforcement which had already been fully argued but which failed before seat court in Swiss Federal Supreme Court.

Held (5:0): Appeal dismissed with costs.

Constitutional Law

Casino Association of South Africa & Ors v Member of the Executive Council for Economic Development Environment Conservation and Tourism & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 39](#)

Reasons delivered: 29 November 2023

Coram: Zondo CJ, Kollapen, Madlanga, Majiedt JJ, Makgoka, Potterill AJJ, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Constitutional law – Impermissible delegation of plenary power – Where first applicant voluntary association that represents various licensed casino operators across South Africa – Where second and third applicants casino licensees – Where amendments to *North West Gambling Act 2 of 2001* (“Gambling Act”) significantly increased gambling levies payable by licensed casinos in North West Province – Where applicants challenged constitutional validity of Gambling Act in High Court – Where High Court declared empowering provisions unconstitutional and invalid on basis they impermissibly delegated law-making power to Member of the Executive Council for Economic Development, Environment, Conservation and Tourism – Where applicants applied to Constitutional Court for confirmation of order of constitutional validity – Whether empowering provisions unconstitutionally delegate powers to Provincial Executive to impose taxes and levies in contravention of s 228 of *Constitution*.

Held (9:0): Order of constitutional invalidity confirmed.

Independent Candidate Association South Africa NPC v President of the Republic of South Africa & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 41](#)

Reasons delivered: 4 December 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ, Theron J and Van Zyl AJ

Catchwords:

Constitutional law – Right to stand for public office – Right to vote – Right to free and fair elections – Where applicant brought application for direct access seeking declaration that item 1 of Schedule 1A to *Electoral Act* inconsistent with *Constitution* to extent it provides for 200 seats in National Assembly to be filled by independent candidates and candidates from regional lists of political parties and 200 seats to be filled by candidates

from national lists of political parties – Where applicant contends Parliament acted unconstitutionally by splitting seats in National Assembly into 200/200 – Where applicant seeks order in terms of which compensatory seats would be reduced from 200 to 50, thus those competing in regional tier would contest for 350 seats instead of 200 seats – Whether 200/200 split rationally connected to legitimate governmental purpose – Whether 200/200 split gives rise to unjustifiable limitation of fundamental rights in *Constitution*, in particular, right to vote and to stand for public office.

Held (9:0): Direct access granted; application dismissed.

One Movement South Africa NPC v President of the Republic of South Africa & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 42](#)

Reasons delivered: 4 December 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ, Theron J and Van Zyl AJ

Catchwords:

Constitutional law – Constitutional right to stand for and hold public office – Freedom of association – Where in response to *New Nation Movement*, Parliament passed *Electoral Amendment Act 1 of 2023* (“EAA”) – Where EAA enabled adult citizen to stand for public office independently of political party provided certain conditions met – Where applicant mounted two constitutional challenges to EAA – Where first challenge regarding requirement for new independent candidate and political party to secure and produce supporting signatures of registered voters in relevant region amounting to 15% of quota of relevant region in preceding election in order to be allowed to contest election (“signature requirement”) – Where second challenge regarding recalculation of allocations of seats when seats forfeited in National Assembly or provincial legislature or when vacancies arise either owing to death or resignation (“recalculation challenge”) – Whether signature requirement detrimentally affects independent candidates’ rights to disassociate, right to make political choices, right to stand for public office, right to dignity and right not to associate with political party system by running as independent candidate – Whether recalculation method constitutional.

Held (7:2; 5:4): Direct access granted; declaration of constitutional invalidity in respect of signature requirement; recalculation challenge refused.

Rayment & Ors v Minister of Home Affairs & Ors; Anderson & Ors v Minister of Home Affairs & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 40](#)

Reasons delivered: 4 December 2023

Coram: Zondo CJ, Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Mathopo J, Potterill AJ, Rogers and Theron JJ

Catchwords:

Constitutional law – Right to human dignity – Right to family life – Child’s best interest – Where applicants foreign nationals who either married to or got involved in good faith spousal relationship with South African citizen and had child – Where relationships with or marriage to South African citizens subsequently came to end or divorced – Where applicants challenged constitutional validity of various provisions of *Immigration Act 13 of 2002* – Where under *Immigration Act* when marriage or good faith spousal relationship between foreign national and South African comes to end foreign national’s visa lapses – Where *Immigration Act* required foreign national cease to work in South Africa and leave country and apply for new visa status from outside country – Where applicants contended in High Court *Immigration Act* infringed right to dignity and s 28(2) of *Constitution* in so far as it obliged foreign national to leave South Africa and apply from outside country – Where High Court held relevant sections of *Immigration Act* constitutionally invalid – Whether *Immigration Act* unjustifiably and unreasonably limits right to human dignity, right to family life and child’s right under section 28(2) of *Constitution*.

Held (9:0): Order of constitutional invalidity confirmed.

R v Bertrand Marchand

Supreme Court of Canada: [\[2023\] SCC 26](#)

Reasons delivered: 3 November 2023

Coram: Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Constitutional law – *Charter of Rights* – Cruel and unusual treatment or punishment – Sentencing – Mandatory minimum sentence – Child luring – Where accused persons pleaded guilty to child luring – Where accused persons challenged constitutionality of mandatory minimum sentences of one year’s imprisonment prescribed for child luring as indictable offence and of six months’ imprisonment for child luring punishable on summary conviction – Whether mandatory minimum sentences constitute cruel and unusual punishment – *Canadian Charter of Rights and Freedoms*, s 12 – *Criminal Code*, RSC 1985, c C-46, s 172.1(2)(a), (b).

Criminal law – Sentencing – Considerations – Child luring – Where accused person pleaded guilty to child luring and sexual interference – Where sentencing judge imposed sentence of five months’ imprisonment for child luring to be served concurrently to sentence for sexual interference – Where

Court of Appeal majority upheld sentencing judge's decision – Whether accused person's sentence for child luring was fit.

Held (6:1 (Côté J dissenting in part)): Appeal in M's case allowed in part; appeal in V's case dismissed.

R v Zacharias

Supreme Court of Canada: [\[2023\] SCC 30](#)

Reasons delivered: 1 December 2023

Coram: Côté, Rowe, Martin, Kasirer and O'Bonsawin JJ

Catchwords:

Constitutional law – *Charter of Rights* – Search and seizure – Arbitrary detention – Consequential breaches – Remedy – Exclusion of evidence – Where police suspected illegal drug activity following lawful traffic stop of accused – Where police detained accused and conducted several searches – Where accused arrested and charged with drug related offences – Where trial judge found initial search and investigative detention breached accused's *Charter* rights but declined to exclude evidence – Whether arrests and searches consequential to initial violation further breached *Charter* – Whether breaches warrant exclusion of evidence – *Canadian Charter of Rights and Freedoms*, ss 8, 9, 24(2).

Held (3:2 (Martin and Kasirer JJ dissenting)): Appeal dismissed.

Scalabrini Centre of Cape Town and Another v Minister of Home Affairs & Ors

Constitutional Court of South Africa: [\[2023\] ZACC 45](#)

Reasons delivered: 12 December 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ, Theron, Tshiqi JJ and Van Zyl AJ

Catchwords:

Constitutional law – Non-refoulement – Deemed abandonment of asylum application – Right to dignity, right to just administrative action and childrens' rights – Where impugned provisions of *Refugees Act 30 of 1998* required asylum seeker to attend Refugee Reception Office to renew visa within one month of expiry – Where upon failure to do so, asylum application deemed to have been abandoned and individual must either leave South Africa or be deported, unless they provide satisfactory reasons to Standing Committee for failure to renew visa – Where applicants submitted in High Court impugned provisions infringe fundamental rights and infringement unjustifiable and constitutionally invalid – Where

applicants argued impugned provisions violate principle of non-refoulement – Where respondents initially opposed proceedings on basis impugned provisions serve lawful government purpose to reduce backlog, but later conceded need to do away with impugned provisions as whole – Where High Court declared impugned provisions constitutionally invalid to extent they provide asylum seekers who have not renewed their visas within one month of date of its expiry considered to have abandoned their applications – Whether impugned provisions violate principle of non-refoulement – Whether impugned provisions infringe constitutional rights.

Held (10:0): Order of constitutional invalidity confirmed with costs.

Sharp v Autorité des marchés financiers

Supreme Court of Canada: [\[2023\] SCC 29](#)

Reasons delivered: 17 November 2023

Coram: Wagner CJ, Karakatsanis, Côté, Brown¹, Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Constitutional law – Extraterritoriality – Jurisdiction – Constitutional applicability of Quebec regulatory scheme to out-of-province residents – Where Quebec administrative tribunal claimed jurisdiction over out-of-province defendants in securities enforcement proceeding – Whether tribunal properly assumed jurisdiction – *Civil Code of Québec*, preliminary provision – *Act respecting the Autorité des marchés financiers*, CQLR, c A-33.2, s 93 – *Securities Act*, CQLR, c V-1.1.

Held (7:1 (Côté J dissenting)): Appeal dismissed with costs.

Courts

Canadian Broadcasting Corp. v Manitoba

Supreme Court of Canada: [\[2023\] SCC 27](#)

Reasons delivered: 9 November 2023

Coram: Wagner CJ, Karakatsanis, Côté, Rowe, Martin, Kasirer and Jamal JJ

Catchwords:

Courts – Open court principle – Publication bans – Discretionary limits on court openness – Important public interest – Privacy – Dignity – Where Court of Appeal ordered publication ban on affidavit filed in criminal

¹ Brown J did not participate in the final disposition of the judgment.

proceedings before it – Where media representative challenged publication ban – Whether Court of Appeal erred in imposing publication ban.

Held (7:0): Appeal dismissed.

David Charles Rae v Commissioner of Police
Supreme Court of New Zealand: [\[2023\] NZSC 156](#)

Reasons delivered: 30 November 2023

Coram: Winkelmann CJ, Glazebrook, O'Regan, Williams and Kós JJ

Catchwords:

Courts – Jurisdiction – Appeal against refusal of recall – Where respondent applied on “without notice” basis to High Court under *Criminal Proceeds (Recovery) Act 2009* for restraining order over funds associated with appellant – Where respondent alleged funds associated with criminal activity – Where High Court granted order – Where notice given to appellant – Where appellant filed affidavit alleging Commission had not made full disclosures to High Court when seeking without notice order – Where High Court accepted it arguably may have been misled and varied notice restraining order by removing one bank account from its scope – Where High Court conducted hearing to deal with respondent’s on notice application – Where appellant argued material non-disclosure in relation to without notice application so serious it should result in entire restraining order being discharged – Where High Court disagreed and found grounds for on notice order established – Where appellant unsuccessfully appealed to Court of Appeal – Where appellant identified errors in Court of Appeal’s judgment and applied for recall of its substantive judgment – Where Court of Appeal refused to recall its substantive judgment because errors identified not important to its reasoning and would not impact outcome reached – Whether Supreme Court has jurisdiction to hear and determine application for leave to appeal against decision of Court of Appeal declining to recall judgment in civil proceeding.

Held (5:0): Leave to appeal granted; appeal dismissed.

Mmabasothe Christinah Olesitse N.O. v Minister of Police
Constitutional Court of South Africa: [\[2023\] ZACC 35](#)

Reasons delivered: 14 November 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Mathopo J, Potterill AJ and Theron J

Catchwords:

Courts – “Once and for all” common law rule – Where applicant executrix deceased estate of her late husband – Where respondent Minister of Police – Where deceased during lifetime employed as police officer – Where deceased charged with theft and corruption – Where charge withdrawn – Where deceased instituted action against respondent for alleged wrongful arrest and detention – Where respondent successfully raised special plea of prescription – Where while first action pending, deceased instituted another action against respondent for alleged malicious prosecution, based on substantially same facts which underpinned claim for unlawful arrest and detention – Where respondent objected and contended second action duplication of first action and offended “once and for all” rule, in terms of which claimant is obliged to claim all damages arising from one cause of action in single action – Where respondent succeeded in High Court and Supreme Court of Appeal – Whether common law “once and for all” rule applies to two or more causes of action arising from same facts.

Held (9:0): Leave to appeal granted; appeal allowed with costs.

Savoi & Ors v National Prosecuting Authority & Anor
Constitutional Court of South Africa: [\[2023\] ZACC 38](#)

Reasons delivered: 28 November 2023

Coram: Kollapen, Madlanga, Majiedt JJ, Makgoka AJ, Mathopo J, Potterill AJ, Rogers and Theron JJ

Catchwords:

Courts – Legal professional privilege – *In camera* (in private) hearing – Where applicants charged with bribery, racketeering, money laundering, fraud and corruption – Where applicants currently pursuing application for permanent stay of prosecution before High Court – Where basis of permanent stay is documents seized from them by state allegedly in violation of legal professional/litigation privilege – Where applicants brought interlocutory application in High Court under s 32 of *Superior Courts Act 10 of 2013* requesting it employs mechanism to consider contested documents *in camera* – Where High Court majority held to establish “special case” under s 32 applications required to prove claim of legal professional privilege – Where applicants not granted leave to appeal from Full Court and Supreme Court of Appeal – Whether party seeking deviation from open justice principle on basis documents required for the determination of case are subject to legal professional privilege must first establish such privilege – Whether *in camera* hearing entails permanent secrecy of proceedings.

Held (8:0): Leave to appeal granted; appeal allowed with costs.

Wolverhampton City Council & Ors v London Gypsies and Travellers & Ors
Supreme Court of the United Kingdom: [\[2023\] UKSC 47](#)

Reasons delivered: 29 November 2023

Coram: Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Briggs and Lord Kitchin

Catchwords:

Courts – Injunctions – Newcomer injunctions – Where between 2015 and 2020, 38 different local authorities, or groups of local authorities, obtained injunctions designed to prevent Gypsies and Travellers from camping on local authority land without permission – Where injunctions addressed to “persons unknown” because Gypsies and Travellers could not generally be identified in advance – Where at time injunctions granted, these persons had not yet committed or threatened to commit any offences or unlawful activity – Where local authorities obtained injunctions without notifying any party at hearing where interests of Gypsies and Travellers not represented – Where once obtained, copies of injunctions displayed in prominent locations on relevant sites – Where local authorities made applications to extend or vary injunctions and after hearing in one of these cases, High Court judge decided need to review all newcomer injunctions affecting Gypsies and Travellers, granting permission to various interveners – Where High Court concluded court did not have power to grant newcomer injunctions, except on short-term, interim basis – Where Court of Appeal held court had power to grant newcomer injunctions, and allowed local authorities appeal – Where appellants, groups representing interests of Gypsies and Travellers, appealed to Supreme Court – Whether court has power to grant injunction which binds persons not identifiable at time when order is granted, and who have not at that time infringed or threatened to infringe any right or duty which claimant seeks to enforce, but may do so at later date.

Held (5:0): Appeal dismissed.

Criminal Law

Groves N.O. v Minister of Police

Constitutional Court of South Africa: [\[2023\] ZACC 36](#)

Reasons delivered: 14 November 2023

Coram: Zondo CJ, Maya DCJ, Kollapen, Madlanga, Majiedt, Mathopo JJ, Potterill AJ, Rogers and Theron JJ

Catchwords:

Criminal law – Discretion to arrest – Where undercover operation conducted at place of residence of late husband of applicant – Where operation uncovered alleged transaction for purchase of mandrax pills – Where charges against late husband withdrawn – Where late husband pursued

claims for unlawful and malicious arrest and detention against first respondent, and for malicious prosecution against second respondent – Where issue arose at trial regarding whether police officer obliged to exercise discretion before he arrested late husband – Where no explicit finding on whether police officer obliged to exercise discretion before arrest – Where late husband's claims dismissed in Regional Court and unsuccessfully appealed to High Court and Supreme Court of Appeal – Whether police officer has discretion, when executing warrant, not to arrest suspect.

Held (9:0): Leave to appeal granted; appeal dismissed.

Criminal Practice

HKSAR v Han Xinjia

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 38](#)

Reasons delivered: 21 November 2023

Coram: Cheung CJ, Ribeiro, Fok, Lam PJJ and Gleeson NPJ

Catchwords:

Criminal practice – Uninformed guilty plea – Permission to reverse guilty plea – Where appellant came from Mainland and overstayed in Hong Kong upon expiry of her permission to remain when travelling affected by COVID-19 pandemic – Where after interview she was told by immigration officer to attend Prosecution Section of Immigration Department at Magistrates' Court – Where appellant not charged and not told she would be subject to criminal prosecution – Where upon attendance at Prosecution Section, appellant brought to courtroom – Where court clerk read charge and brief facts to her and she then pleaded guilty – Where appellant subsequently applied to reverse her plea after obtaining legal advice and application refused by magistrate – Where appellant unsuccessfully appealed to Court of First Instance – Where in Court of Final Appeal, respondent conceded leave application and substantive appeal – Whether appellant suffered substantial and grave injustice from not having been provided with statement and particulars of offence charged and summary of facts of case against her before arraigned in court which involved departure from accepted norms.

Held (5:0): Appeal allowed, appellant permitted to reverse her plea.

HKSAR v Khaw Kim Sun

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 37](#)

Reasons delivered: 21 November 2023

Coram: Cheung CJ, Ribeiro, Fok, Lam PJJ and McLachlin NPJ

Catchwords:

Criminal practice – Trial – Directions to jury – Misdirection – Where appellant convicted of murdering his wife and daughter – Where cause of death carbon monoxide poisoning – Where initial investigations focused on car as source of carbon monoxide gas – Where six months later, police realised carbon monoxide came from yoga ball in car – Where during intervening six months, car’s interior disturbed by other investigations – Where initial search conducted for yoga ball stopper unsuccessful (“PW 17’s evidence”), but found in drawer in appellant’s study one year after victims’ deaths – Where no evidence to connect stopper found in drawer with yoga ball in car – Where prosecution suggested to jury stopper found in drawer might be from yoga ball placed in car – Where critical question at trial who put yoga ball in car and why – Where judge directed jury that if they found PW 17’s evidence reliable, then they could eliminate daughter as person who put yoga ball in car, since she would have had no reason to throw stopper away – Where judge did not direct jury to consider what could have happened to stopper during six months before search – Whether judge’s directions to jury concerning inferences that might be drawn from allegedly missing stopper of yoga ball amounted to misdirection and gave rise to substantial and grave injustice.

Held (5:0): Appeal allowed, convictions set aside and retrial ordered on the charges of murder.

HKSAR v Kwan Tat-yee

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 44](#)

Reasons delivered: 19 December 2023

Coram: Cheung CJ, Ribeiro, Fok, Lam PJJ and Gleeson NPJ

Catchwords:

Criminal practice – Trial – Directions to jury – *Liberato* direction – Where appellant and his wife quarrelled in his flat about sale of property – Where argument became heated and he struck her four times with knife that killed her – Where appellant convicted of murdering his wife – Where appellant did not dispute guilty of culpable homicide and question at trial whether killing took form of murder or manslaughter – Where at trial appellant’s sister who was present at time of stabbing gave evidence – Where sister’s evidence given at trial differed to evidence she gave earlier to police – Where in summing-up, judge invited jury to decide on truthfulness of sister’s evidence – Where in Court of Appeal, appellant argued circumstances called for his formulation of *Liberato* direction, judge should have directed jurors if satisfied sister’s evidence might be true, they could act on it – Where Court of Appeal decided against appellant, dismissing his application for leave to appeal against his conviction – Whether Court of

Appeal erred in concluding *Liberato* direction not needed in circumstances of present case.

Held (5:0): Appeal dismissed.

Silfhout v Pathirannehelage

Supreme Court of New Zealand: [\[2023\] NZSC 148](#)

Reasons delivered: 6 November 2023

Coram: Winkelmann CJ, O'Regan, Ellen France, Williams and Kós JJ

Catchwords:

Criminal practice – Victim's special claims – Limitation period – Where respondent victim of offending by appellant in 2010 – Where in 2020, Department of Corrections agreed to pay appellant \$12,000 compensation for alleged breach of privacy – Where *Prisoners' and Victims' Claims Act 2005* ("PVCA") enables victims to make claims against compensation awarded to offenders – Where in reliance on PVCA respondent lodged with Victims' Special Claims Tribunal claim for \$10,000 compensation for emotional harm arising out of offending – Where respondent's claim time-barred – Where s 64(1) of PVCA states relevant limitation period, which sets six-year deadline for bringing claim, "cease[s] to run while the offender is serving a sentence of imprisonment in a penal institution, prison, or service prison" – Where appellant spent time remanded in custody prior to sentencing – Where Tribunal did not consider claim time-barred – Where both High Court and Court of Appeal concluded time spend in pre-sentence detention did count so limitation period suspended during this time – Whether time spent in remand prior to sentence counts to suspend limitation period.

Held (5:0): Appeal allowed.

Solicitor-General's Reference (No 1 of 2023) from CA636/2021 ([2022] NZCA 504)

Supreme Court of New Zealand: [\[2023\] NZSC 151](#)

Reasons delivered: 17 November 2023

Coram: Winkelmann CJ, O'Regan, Ellen France, Williams and Kós JJ

Catchwords:

Criminal practice – Miscarriage of justice – Co-accused differing pleas – Where Mr Darling and Mr Anderson both charged with aggravated robbery but Mr Darling charged under s 235(b) of *Crimes Act 1961* and Mr Anderson charged under s 235(a) – Where Mr Darling pleaded guilty – Where Mr Anderson pleaded not guilty and acquitted of charge of aggravated robbery

and others he faced at time – Where Mr Darling appealed to Court of Appeal on grounds no reasonable basis for conviction given Mr Anderson’s acquittal – Where Court of Appeal allowed Mr Darling’s appeal and quashed his conviction because guilty plea could not be reconciled with Mr Anderson’s acquittal – Where Supreme Court granted leave to Solicitor-General to answer question of law – Whether Mr Anderson’s acquittal meant Mr Darling could not, in law, have been convicted of offence charged, despite his guilty plea.

Held (5:0): Question of law answered “no”.

Employment Law

Ditsoane v ACWA Power Africa Holdings (Pty) Ltd
Constitutional Court of South Africa: [\[2023\] ZACC 44](#)

Reasons delivered: 12 December 2023

Coram: Maya DCJ, Kollapen, Mathopo, Mhlantla, Rogers JJ, Schippers AJ, Theron and Tshiqi JJ

Catchwords:

Employment law – Notice of withdrawal of case – Where applicant began employment with respondent in November 2015 – Where on 27 October 2016, respondent issued retrenchment letter – Where applicant referred unfair dismissal dispute to Commission for Conciliation, Mediation and Arbitration (“CCMA”) – Where CCMA issued certificate that dispute remained unresolved – Where applicant referred her unfair dismissal claim to Labour Court – Where prior to hearings, applicant informed attorneys she would be changing attorneys and that they should file notice of withdrawal – Where previous attorneys wrote letter to respondent’s attorneys and delivered notice purporting to withdraw matter – Where previous attorneys later acknowledged that it had misunderstood applicant’s instructions, which were to withdraw as her attorneys of record, and not to withdraw the matter in its entirety – Whether notice of withdrawal filed without applicant’s authority – Whether withdrawing matter not part of applicant’s previous attorney mandate and applicant therefore not bound by it – Whether applicant’s previous attorneys had apparent or ostensible authority to withdraw her case – Whether applicant’s conduct ratified withdrawal – Whether applicant estopped from denying previous attorney’s authority to withdraw case.

Held (8:0): Leave to appeal granted; appeal allowed.

Independent Workers Union of Great Britain v Central Arbitration Committee & Anor
Supreme Court of the United Kingdom: [\[2023\] UKSC 43](#)

Reasons delivered: 21 November 2023

Coram: Lord Lloyd-Jones, Lord Briggs, Lord Stephens, Lady Rose and Lord Richards

Catchwords:

Employment law – Collective bargaining – Meaning of “workers” – European Convention on Human Rights (“ECHR”), Article 11 – Where Deliveroo riders (“Riders”) joined appellant, independent trade union – Where Deliveroo refused to enter into collective bargaining negotiations with Union – Where Union made application to Central Arbitration Committee (“CAC”) – Where CAC has power to order employer to recognise union and engage in collective bargaining if conditions met – Where one condition is people in respect of whom union wishes to be recognised are “workers” within meaning of s 296 of *Trade Union and Labour Relations (Consolidation) Act 1992* – Where CAC found Riders do not meet definition of “workers” – Where CAC rejected additional argument that refusing to recognise Union would breach riders’ rights under Article 11 of ECHR, which protects freedom of peaceful assembly and association – Where Union unsuccessfully sought judicial review of CAC’s decision in High Court – Where Union appealed to Court of Appeal on Article 11 ground – Where Court of Appeal upheld High Court’s decision – Whether Riders fall within scope of Article 11 – Whether Article 11 rights would include right that United Kingdom legislate to require Deliveroo to engage in collective bargaining – Whether Riders’ exclusion from definition of “workers” violation of Article 11 right or justified under Article 11(2) – Whether definition of “workers” can be read down to include Riders.

Held (5:0): Appeal dismissed.

R (on the application of Palmer) v Northern Derbyshire Magistrates Court & Anor

Supreme Court of the United Kingdom: [\[2023\] UKSC 38](#)

Reasons delivered: 1 November 2023

Coram: Lord Reed, Lord Hodge, Lord Burrows, Lady Rose and Lord Richards

Catchwords:

Employment law – Criminal liability for collective redundancies – Meaning of “officer” – Where appellant appointed as one of three joint administrators of West Coast Capital (USC) Ltd (“USC”) on 13 January 2015 – Where on 14 January 2015 employees handed letter signed by appellant, stating they were at risk of redundancy and giving notice of USC’s intention to consult with them at staff meeting that day – Where same day, employees were handed further letter, also signed by appellant, dismissing them with effect from that day – Where no notice of redundancies given to Secretary of

State until relevant form, signed by appellant, emailed on 4 February 2015 – Where in July 2015, criminal proceedings were commenced against appellant, alleging that he had committed offence set out in s 194 of *Trade Union and Labour Relations (Consolidation) Act 1992* – Where Magistrates Court held appellant liable as an “officer” – Whether administrator of company appointed under *Insolvency Act 1986* is “officer” of company within meaning of phrase “any director, manager, secretary or similar officer of the body corporate”, as used in s 194.

Held (5:0): Appeal allowed.

R v Greater Sudbury

Supreme Court of Canada: [\[2023\] SCC 28](#)

Reasons delivered: 10 November 2023

Coram: Wagner CJ, Karakatsanis, Côté, Brown², Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ

Catchwords:

Employment law – Provincial offences – Occupational health and safety – Duties of employers – Construction projects – Control over workers and workplace – Where city contracted with constructor to repair water main – Where pedestrian struck and killed by road grader during repairs – Where city charged with breaching duties of employers under provincial occupational health and safety legislation – Whether city liable as employer for breach of duties – *Occupational Health and Safety Act*, RSO 1990, c O.1, ss 1(1) “employer”, 25(1)(c), 66(3)(b) – *Construction Projects*, O.Reg. 213/91.

Held (4:4 (Rowe, O’Bonsawin, Karakatsanis and Côté JJ dissenting)): Appeal dismissed.

Equity

Byers & Ors v Saudi National Bank

Supreme Court of the United Kingdom: [\[2023\] UKSC 51](#)

Reasons delivered: 20 December 2023

Coram: Lord Hodge, Lord Briggs, Lord Leggatt, Lord Burrows and Lord Stephens

Catchwords:

² Brown J did not participate in the final disposition of the judgment.

Equity – Breach of trust – Knowing receipt – Where Mr Al-Sanea acquired shares in five Saudi Arabian companies and held them on trust for third appellant – Where Mr Al-Sanea transferred shares to Samba Financial Group (“Samba”) in breach of terms of trust in favour of third appellant – Where under Saudi Arabian law effect of transfer extinguished third appellant’s interest in shares and Samba became sole owner of shares following transfer – Where third appellant went into liquidation, and together with its joint liquidators, first and second appellants, made claim for knowing receipt against Samba alleging that it received trust property in knowledge that property transferred in breach of trust – Where Samba’s assets and liabilities transferred to respondent – Where High Court dismissed appellants’ claim – Where appellants unsuccessfully appealed to Court of Appeal – Whether claim for knowing receipt can be made if claimant’s equitable interest in property in question has been extinguished by time of defendant’s knowing receipt of property.

Held (5:0): Appeal dismissed.

Evidence

TUI UK Ltd v Griffiths

Supreme Court of the United Kingdom: [\[2023\] UKSC 48](#)

Reasons delivered: 29 November 2023

Coram: Lord Hodge, Lord Lloyd-Jones, Lord Briggs, Lord Burrows and Lord Stephens

Catchwords:

Evidence – Uncontroverted expert evidence – Where appellant went on holiday and suffered stomach upset leading to long term problems – Where appellant sued travel company from whom he had purchased holiday – Where appellant presented evidence from expert witness, who concluded likely cause of appellant’s stomach upset was food and drink served at hotel – Where respondent did not cross-examine expert nor provide contrary evidence on question of causation – Where respondent in closing submissions submitted expert’s report deficient – Where trial judge agreed with respondent and dismissed claim – Where High Court allowed appellant’s appeal – Where respondent successfully appealed to Court of Appeal – Whether trial judge entitled to find claimant had not proved his case when claimant’s expert had given uncontroverted evidence as to cause of illness.

Held (5:0): Appeal allowed.

Extradition

Popoviciu v Curtea De Apel Bucharest (Romania)
Supreme Court of the United Kingdom: [\[2023\] UKSC 39](#)

Reasons delivered: 8 November 2023

Coram: Lord Hodge, Lord Lloyd-Jones, Lord Kitchin, Lord Hamblen and Lord Stephens

Catchwords:

Extradition – Flagrant denial of justice – Wholly unfair trial – *European Convention on Human Rights* (“ECHR”) – Where in 2016, respondent convicted in Bucharest Court of Appeal of offences relating to conspiracy to transfer plot of land from state ownership to private company in which he had interest and sentenced to 7 years’ imprisonment – Where on 3 August 2017, European Arrest Warrant issued seeking return of respondent to serve his sentence – Where respondent arrested in United Kingdom on 14 August 2017 and on 12 July 2019, Magistrates’ Court ordered extradition – Where respondent appealed to High Court, alleging improper and corrupt relationship between judge who presided at his criminal trial and key prosecution witness – Where High Court held substantial grounds for believing real risk respondent’s trial so flagrantly unfair that his right to liberty under Article 5 of ECHR would be violated if returned to Romania – Where High Court discharged respondent and quashed order made by Magistrates’ Court – Where Romanian authorities appealed decision to Supreme Court – Where Arrest Warrant withdrawn, but Supreme Court nevertheless decided to deliver judgment – Whether in conviction extradition case, it is sufficient for requested person to show substantial grounds for believing real risk that trial so flagrantly unfair to deprive him of essence of his Article 6 rights, and therefore real risk that his imprisonment in requesting state will violate his Article 5 rights.

Held (5:0): Appeal dismissed.

Family Law

Ad Hoc Central Authority for the Republic of SA & Anor v Koch N.O. & Anor

Constitutional Court of South Africa: [\[2023\] ZACC 37](#)

Reasons delivered: 27 November 2023

Coram: Zondo CJ, Kollapen, Madlanga, Majiedt JJ, Makgoka, Potterill AJJ, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Family law – Wrongful retention of child – *Hague Convention on the Civil Aspects of International Child Abduction* (“Convention”), Article 13(b) – Where child (“E”) lives with maternal aunt in South Africa (“SA”) – Where E born in United Kingdom (“UK”) to parents who were both British Nationals – Where E’s mother originally from SA – Where mother diagnosed with cancer and family travelled from UK to SA to consult doctors – Where mother underwent surgery in SA and unable to return to UK with E and her father as intended – Where E’s father left as planned, leaving behind E with her mother – Where relationship between mother and father deteriorated by time father returned to UK – Where mother did not believe father would be in position to raise E and made arrangements for E’s care after her death – Where mother informed father she would remain in SA with E, and her sister would raise E after her death – Where father opposed mother’s unilateral decision and insisted that E must be returned to UK – Where father approached UK Central Authority under Convention to secure immediate return of E to UK on basis he had not given consent for E to remain indefinitely in SA – Where Ad Hoc Central Authority in South Africa (“ADHOC”) requested mother to immediately return E to UK – Where mother and aunt brought application in High Court wherein they asked certain parental rights and responsibilities in respect of E be conferred upon aunt and E be raised in SA – Where father opposed application and launched proceedings under Convention by way of counter application – Where High Court ordered return of E to UK – Where aunt successfully appealed to Supreme Court of Appeal – Where ADHOC and father appealed to Constitutional Court – Whether Supreme Court of Appeal correctly found E’s return to UK would pose grave risk of psychological harm and intolerable situation under Article 13(b) of Convention.

Held (5:4): Leave to appeal granted; appeal allowed.

Legal Practitioners

Le Roux & Anor v Johannes G Coetzee and Seuns & Anor
Constitutional Court of South Africa: [\[2023\] ZACC 46](#)

Reasons delivered: 18 December 2023

Coram: Maya DCJ, Kollapen, Madlanga, Majiedt JJ, Makgoka, Potterill AJJ, Rogers, Theron JJ and Van Zyl AJ

Catchwords:

Legal practitioners – Professional negligence – Knowledge of facts – Where applicants granted option to purchase farm – Where second respondent lawyer practising at first respondent law firm – Where applicants met with second respondent and mandated him to advise them and exercise option on their behalf – Where second respondent advised applicants option valid – Where prior to leaving his office, applicants asked second respondent whether necessary for them to sign anything and he responded it was not

– Where second respondent purported to exercise option on behalf of applicants – Where in breach of option and without applicants’ knowledge, farm had already been sold and transferred – Where applicants brought action against owner of farm and purchaser to enforce option and claim transfer of property (“first action”) – Where first action dismissed by High Court on basis exercise of option was ineffectual, as it did not comply with requirements of s 2(1) of *Alienation of Land Act* because second respondent failed to obtain applicants’ written authority – Where applicants brought action for breach of mandate seeking damages against respondents (“breach of mandate action”) – Where applicants succeeded in High Court on breach of mandate action – Where respondents successfully appealed breach of mandate action to Supreme Court of Appeal – Whether facts as contemplated in s 12(3) of *Prescription Act* in negligence action against legal professional include legal conclusions.

Held (9:0): Leave to appeal granted; appeal allowed with costs.

Limitation of Actions

Canada Square Operations Ltd v Potter

Supreme Court of the United Kingdom: [\[2023\] UKSC 41](#)

Reasons delivered: 15 November 2023

Coram: Lord Reed, Lord Hodge, Lord Kitchin, Lord Sales and Lord Lloyd-Jones

Catchwords:

Limitation of actions – Accrual of cause of action – Meaning of “deliberately concealed” – Meaning of “deliberate commission of a breach of duty” – Where on 26 July 2006, respondent entered into credit agreement with appellant – Where on 14 December 2018, respondent issued claim against appellant seeking to recover amounts she paid to it in respect of payment protection insurance policy (“PPI Policy”) – Where respondent argued appellant’s failure to disclose substantial commission charged on PPI Policy rendered relationship between them “unfair” within meaning of s 140A of *Consumer Credit Act 1974* and entitled to remedial orders – Where appellant argued respondent time barred by six-year limitation period – Where respondent contended claim not time barred because limitation period did not start to run until she found out about commission after taking legal advice in November 2018 – Whether appellant deliberately concealed fact relevant to respondent’s right of action – Whether appellant’s conduct amounted to deliberate commission of breach of duty.

Held (5:0): Appeal dismissed.

Local Government

R (on the application of Imam) v London Borough of Croydon
Supreme Court of the United Kingdom: [\[2023\] UKSC 45](#)

Reasons delivered: 28 November 2023

Coram: Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Richards and Lord Burnett

Catchwords:

Local government – Local housing authority – Homelessness – Temporary accommodation – Where respondent disabled and has three children – Where respondent applied to appellant, local housing authority, for assistance as homeless person – Where Part 7 of *Housing Act 1996* makes provision of assistance to be provided to homeless by local housing authorities – Where s 193(2) sets out main housing duty owed to persons with priority needs who are not homeless intentionally – Where appellant provided respondent with temporary accommodation since September 2014 under the Act – Where appellant accepts accommodation not suitable due to respondent’s disability – Where respondent brought claim for judicial review of appellant’s conduct – Where High Court allowed claim on limited grounds – Where Court of Appeal allowed appeal on limited grounds – Whether local authority’s lack of financial or other resources should be taken into consideration when court is deciding whether to grant mandatory order against local authority to enforce its statutory duty toward homeless individual under s 193(2).

Held (5:0): Appeal dismissed.

Migration

R (on the application of AAA & Ors) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2023\] UKSC 42](#)

Reasons delivered: 15 November 2023

Coram: Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Briggs and Lord Sales

Catchwords:

Migration – Rwanda policy – Non-refoulement – Where on 13 April 2022, UK and Rwandan governments entered into Migration and Economic Development Partnership (“MEDP”) – Where on basis of arrangements made and assurances given in MEDP, Home Secretary decided Rwanda safe third country to which asylum seekers could be removed – Where number of asylum seekers, including respondents, challenged lawfulness of Rwanda policy and Home Secretary’s decisions to remove each particular

respondent to Rwanda – Where Divisional Court held Rwanda policy lawful in principle – Where Court of Appeal held Rwanda policy unlawful because substantial grounds for believing real risks asylum claims would not be properly determined by Rwandan authorities and therefore real risks of refoulement – Where Court of Appeal rejected argument that Rwanda policy also incompatible with retained EU law, namely Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status – Where appellant appeals to Supreme Court on refoulement ground and fifth respondent cross-appeals on retained EU law grounds – Whether majority of Court of Appeal correct to conclude Divisional Court applied incorrect legal test – Whether Court of Appeal entitled to interfere with Divisional Court’s conclusion if it did apply correct test – Whether Court of Appeal wrong to conclude substantial grounds for thinking asylum seekers would face real risk of ill-treatment, in form of refoulement, following removal to Rwanda – Whether Rwanda policy unlawful because incompatible with retained EU law.

Held (5:0): Appeal dismissed; cross-appeal dismissed.

R (on the application of Afzal) v Secretary of State for the Home Department; R (on the application of Iyieke) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2023\] UKSC 46](#)

Reasons delivered: 28 November 2023

Coram: Lord Reed, Lord Kitchin, Lord Sales, Lord Burrows and Lord Stephens

Catchwords:

Migration – Application for indefinite leave to remain – Meaning of “disregarded” – Where respondent granted appellants in each case, Mr Afzal and Mr Iyieke leave to remain – Where Mr Afzal applied for indefinite leave to remain (“ILR”) and rejected on grounds of gap in continuous lawful residence – Where Mr Iyieke also refused in his application applied for ILR – Where Mr Afzal unsuccessfully issued judicial review claim – Where Court of Appeal granted permission to appeal but dismissed his claim on merits – Where Mr Iyieke also issued judicial review claim and refused by Upper Tribunal and then Court of Appeal on merits – Whether s 3C of *Immigration Act 1971* applies in case where application for leave to remain is said to be invalid by reason of failure to pay Immigration Health Surcharge at proper time, so that leave is extended by that provision the application is decided or withdrawn – Proper interpretation of “the previous application”.

Held (5:0): Appeals dismissed.

Patents

Thaler (Appellant) v Comptroller-General of Patents, Designs and Trademarks

Supreme Court of the United Kingdom: [\[2023\] UKSC 49](#)

Reasons delivered: 20 December 2023

Coram: Lord Hodge, Lord Kitchin, Lord Hamblen, Lord Leggatt and Lord Richards

Catchwords:

Patents – Artificial intelligence – Inventor – Meaning of “inventor” – Where appeal concerns two patent applications – Where inventions disclosed and described by patent applications generated by machine (“DABUS”) acting autonomously and powered by artificial intelligence – Where appellant maintains entitled to make and pursue application on basis that he is owner of DABUS – Where Hearing Officer for respondent issued decision that DABUS could not be regarded as inventor and appellant not entitled to apply for patents simply by his ownership of DABUS – Where High Court and majority of Court of Appeal dismissed appellant’s appeal – Whether scope and meaning of “inventor” in *Patents Act 1977* extends to machine such as DABUS – Whether appellant owner of any invention in any technical advance made by DABUS and entitled to apply for an obtain patent in respect of it.

Held (5:0): Appeal dismissed.

Private International Law

Zubaydah v Foreign, Commonwealth and Development Office & Ors

Supreme Court of the United Kingdom: [\[2023\] UKSC 50](#)

Reasons delivered: 20 December 2023

Coram: Lord Lloyd-Jones, Lord Kitchin, Lord Sales, Lord Burrows, Lord Stephens

Catchwords:

Private international law – Choice of law – *Private International Law (Miscellaneous Provisions) Act 1995* – Where respondent Palestinian national detained without trial by United States authorities since 2002 and currently held in Guantánamo Bay – Where respondent alleges he was subjected to extreme mistreatment and torture – Where UK Security Service and UK Secret Intelligence Service (“UK Services”) sent numerous questions to Central Intelligence Agency (“CIA”) for purpose of eliciting information from respondent – Where respondent seeks compensation for personal injuries sustained in pursuit of information sought by UK services in six different countries – Where High Court ordered as preliminary issue law governing torts should be identified – Where respondent argued law of

England and Wales applies, and appellants argued laws of each of the six countries apply – Where High Court agreed with appellants, but Court of Appeal overturned decision – Whether applicable law is law of England and Wales or law of each of six countries in which claimant alleges he was unlawfully detained and tortured by the CIA.

Held (4:1 (Lord Sales dissenting)): Appeal dismissed.

Taxation

Commissioners for His Majesty's Revenue and Customs v Fisher & Anor; Commissioners for His Majesty's Revenue and Customs v Fisher No 2
Supreme Court of the United Kingdom: [\[2023\] UKSC 44](#)

Reasons delivered: 21 November 2023

Coram: Lord Reed, Lord Hodge, Lord Sales, Lord Stephens and Lady Rose

Catchwords:

Taxation – Transfer of assets abroad – Where Fishers family, appellants in first appeal, established betting business ran through UK company Stan James (Abingdon) Limited (“SJA”) – Where Fishers held shares in SJA and directors of it – Where Fishers transferred betting operations to Gibraltar and set up new company in Gibraltar “SJG” – Where SJA and SJG entered into agreement transferring whole of SJA’s business, other than its betting shops in UK, to SJG – Where His Majesty’s Revenue and Customs (“HMRC”), respondent in first appeal, issued assessments to tax to relevant members of Fishers family – Where HMRC treated profits of SJG as deemed income of Fishers in proportion to their shareholdings – Where majority of Court of Appeal found for one individual in Fisher family but against others – Where Fishers and HMRC appealed to Supreme Court – Whether individual charged to tax under s 739 has to be transferor of assets – Whether Fishers transferred assets.

Held (5:0): Fishers’ appeal allowed; HMRC’s appeal dismissed.

Dr. The Honourable Leung Ka-Lau v The Commissioner of Inland Revenue

Hong Kong Court of Final Appeal: [\[2023\] HKCFA 36](#)

Reasons delivered: 10 November 2023

Coram: Cheung CJ, Ribeiro, Fok, Lam PJJ and McLachlin NPJ

Catchwords:

Taxation – Salaries tax assessment – Where Hospital Authority (“HA”) operated on-call system whereby doctors required to be on stand-by on their rest days or statutory/public holidays – Where respondent, employee of HA, deprived of certain rest days and statutory/public holidays due to on-call system – Where in 2009 Court of Final Appeal held respondent entitled to damages payable by HA for rest days and statutory/public holidays he was deprived of, according to ss 17 and 39 of *Employment Ordinance* – Where damages assessed to be sum of HK\$1,765,821 (“Sum”) – Where present appeal arose from assessment of appellant that Sum subject to salaries tax, to which respondent filed objection – Where Deputy Commissioner of Inland Revenue (“DCIR”) affirmed salaries tax assessment – Where respondent appealed to Board of Review, which upheld determination of DCIR – Where Court of First Instance decided for respondent and appellant’s appeal dismissed by majority of Court of Appeal – Whether Sum is taxable as salaries tax.

Held (5:0): Appeal allowed.

Skatteforvaltningen (the Danish Customs and Tax Administration) v Solo Capital Partners LLP (in special administration) & Ors
Supreme Court of the United Kingdom: [\[2023\] UKSC 40](#)

Reasons delivered: 8 November 2023

Coram: Lord Hodge, Lord Lloyd-Jones, Lord Briggs, Lord Hamblen and Lord Richards

Catchwords:

Taxation – Revenue rule – Sovereign authority rule – Where respondent, Danish Customs and Tax Administration, issued claims in England and Wales against number of parties, including appellants – Where respondent alleges in its claims these parties submitted fraudulent applications for tax refunds to which they were never entitled – Where respondent brought claims in Commercial Court in England and Wales – Where appellants defended claims on basis protected by revenue rule – Whether revenue rule applies – Whether sovereign authority rule applies.

Held (5:0): Appeal dismissed.

Tort

HXA v Surrey County Council; YXA (a protected party by his litigation friend the Official Solicitor) v Wolverhampton City Council
Supreme Court of the United Kingdom: [\[2023\] UKSC 52](#)

Reasons delivered: 20 December 2023

Coram: Lord Reed, Lord Briggs, Lord Sales, Lord Burrows and Lord Stephens

Catchwords:

Tort – Negligence – Local authorities – Duty of care – Common law duty of care to protect children from harm – Where appeal concerns two separate claims in tort of negligence brought against two local authorities, appellants in each case – Where respondents in each case children who on assumed facts suffered sexual or physical abuse by parent or parent’s partner – Where respondents alleged appellants owed duty of care because they had, by their conduct, assumed responsibility to protect them from harm caused by third parties – Where local authorities have certain powers and duties under *Children Act 1988* – Where appellants applied to strike out claims on basis that they contained no arguable duty of care and therefore should not proceed to trial – Where first instance judges and, on appeal, High Court struck out claims – Where Court of Appeal allowed appeal of respondents and reversed strike-out – Whether there is duty of care owed at common law by local authorities to protect children from harm.

Held (5:0): Appeals allowed.
